

Application Serial No.: 10/537,621
Reply dated September 22, 2009
Reply to Office Action of June 22, 2009

Remarks/Arguments:

Claims 1, 3-9, 11-17 and 19-26 are pending in this application. Of these, claims 1, 9 and 17 are independent claims.

In the Office Action, the Examiner rejected claims 1-4, 6, 8-12, 14, 16-20, 22 and 24-26 under 35 USC 102(e) as anticipated by US Publication 2005/0154759 ("Hofmeister"). In response, the independent claims have been amended in two ways. Firstly, references to "an updated version of an application" and "updated application" have been removed from the claim. This is to clarify that the transmitting occurs in response to a new application being made available at a server and that the message indicates that the new application is available (emphasis added). Secondly, a limitation formerly in claims 2, 10 and 18, i.e. that the set of wireless communication devices is a subset of an overall set of wireless communication devices in communication with the server, has been incorporated into claims 1, 9 and 17, respectively, with the dependent claims accordingly being cancelled. As well, dependent claims 3, 5, 6, 11, 13, 14, 19, 21, 22 and 25 have been amended in view of the amendments to the base claims. No new matter is believed to have been added by any of the above amendments.

The amended base claims are believed to recite limitations not shown in Hofmeister. For example, referring to claim 1, the claim now recites transmitting a message over a wireless connection to a set of wireless communications devices indicating that a new application is available, wherein the set of wireless communication device is a subset of an overall set of wireless communications devices in communication with said server.

In rejecting former claim 2, the Examiner stated, at page 4 of the Office Action, that the limitations of that claim are found at paragraph 0035 of Hofmeister. Paragraph 0035 describes generation, upon an upgrade for an application being added to an application catalog, of a push message to each mobile device that has downloaded the application. The implication is that the “subset” of devices in Hofmeister are the mobile devices that have previously downloaded the application.

Yet claim 1 no longer recites updated versions of applications being made available at the server. It only recites new applications being made available at the server. In view of that fact, Hofmeister’s purported subset of mobile devices, i.e. “each mobile device that has downloaded that application,” cannot constitute the subset of wireless communication devices of current claim 1. The reason is that claim 1 requires the transmitting to be “in response to a new application being made available at a server” and the message to indicate “that said new application is available” (emphasis added). By definition, this cannot be shown by Hofmeister’s push message to each mobile device that has previously downloaded an application, precisely because the previous download of the application by Hofmeister’s mobile devices renders the application no longer new. Thus, Hofmeister does not contemplate any mechanism for identifying a subset of an overall set of wireless communication devices in the case when a new application has become available. Accordingly, Hofmeister does not show transmitting a message to a set of wireless communication devices indicating that a new application is available, wherein the set of wireless communication devices is a subset of an overall set of wireless communication devices in communication with the server.

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Because each and every element as set forth in the claims is not found in Hofmeister, the claims cannot be anticipated by that reference (see MPEP 2131). Withdrawal of the rejection of claim 1 under 35 USC 102(e) is therefore requested.

Independent claims 9 and 17 were rejected on the same grounds as claim 1. Those claims have now been amended in an analogous manner to claim 1. Accordingly, the above arguments are equally applicable to claims 9 and 17. Withdrawal of the rejection of those claims under 35 USC 102(e) is therefore requested, for the same reasons.


All of the claims dependent from any of claims 1, 13 or 24 distinguish over Hofmeister for at least the same reasons as the base claims from which they depend.

All of the remaining claims were rejected under 35 USC 103(a) as unpatentable over Hofmeister in view of US 2005/0055687 ("Mayer"). However, because each of those rejections builds upon the rejection of the independent claims from which they depend (in respect of which certain features have been shown to be absent given the Applicant's amendment of these claims), no *prima facie* obviousness has been demonstrated for any of those claims. There is no evidence that that the feature(s) missing from the base claims can be found in Mayer.

In view of the foregoing, favorable reconsideration and allowance of the application are earnestly solicited.

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